

106TH CONGRESS
1ST SESSION

S. 385

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1999

Mr. ENZI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safety Advancement for Employees Act of 1999” or the
6 “SAFE Act”.

7 (b) REFERENCE.—Whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference
10 shall be considered to be made to a section or other provi-

1 sion of the Occupational Safety and Health Act of 1970
 2 (29 U.S.C. 651 et seq.).

3 **SEC. 2. PURPOSE.**

4 Section 2(b) of the Act (29 U.S.C. 651(b)) is
 5 amended—

6 (1) in paragraph (13), by striking the period
 7 and inserting “; and”; and

8 (2) by adding at the end the following:

9 “(14) by increasing the joint cooperation of em-
 10 ployers, employees, and the Secretary of Labor in
 11 the effort to ensure safe and healthful working con-
 12 ditions for employees.”.

13 **SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

14 (a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is
 15 amended by inserting after section 8 the following:

16 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-
 17 GRAM.**

18 “(a) PURPOSE.—Recognizing that—

19 “(1) employee safety is of paramount concern;

20 “(2) employers are overburdened by regulations

21 and are unable to read through, understand and ef-

22 fectively comply with the voluminous requirements of

23 this Act; and

1 “(3) the Secretary is unable to individually sat-
2 isfy the compliance needs of each employer and em-
3 ployee within its jurisdiction;

4 it is the purpose of this section to encourage employers
5 to conduct voluntary safety and health audits using the
6 expertise of qualified safety and health consultants and
7 to proactively seek individualized solutions to workplace
8 safety and health concerns.

9 “(b) ESTABLISHMENT OF PROGRAM.—

10 “(1) IN GENERAL.—Not later than 18 months
11 after the date of enactment of this section, the Sec-
12 retary, in consultation with the advisory committee
13 established under section 7(d), shall establish and
14 implement, by regulation, a program that qualifies
15 individuals to provide consultation services to em-
16 ployers to assist employers in the identification and
17 correction of safety and health hazards in the work-
18 places of employers.

19 “(2) ELIGIBILITY.—The following individuals
20 shall be eligible to be qualified under the program
21 under paragraph (1) as certified safety and health
22 consultants:

23 “(A) An individual who is licensed by a
24 State authority as a physician, industrial hy-

1 gienist, professional engineer, safety engineer,
2 safety professional, or occupational nurse.

3 “(B) An individual who has been employed
4 as an inspector for a State plan State or as a
5 Federal occupational safety and health inspec-
6 tor for not less than a 5-year period.

7 “(C) An individual who is qualified in an
8 occupational health or safety field by an organi-
9 zation whose program has been accredited by a
10 nationally recognized private accreditation orga-
11 nization or by the Secretary.

12 “(D) Other individuals determined to be
13 qualified by the Secretary.

14 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
15 SERVICES.—A consultant qualified under the pro-
16 gram under paragraph (1) may provide consultation
17 services in any State.

18 “(4) LIMITATION BASED ON EXPERTISE.—A
19 consultant qualified under the program under para-
20 graph (1) may only provide consultation services to
21 an employer with respect to a worksite if the work
22 performed at that worksite coincides with the par-
23 ticular expertise of the individual.

24 “(c) SAFETY AND HEALTH REGISTRY.—The Sec-
25 retary shall develop and maintain a registry that includes

1 all consultants that are qualified under the program under
2 subsection (b)(1) to provide the consultation services de-
3 scribed in subsection (b) and shall publish and make such
4 registry readily available to the general public.

5 “(d) DISCIPLINARY ACTIONS.—The Secretary may
6 revoke the status of a consultant qualified under sub-
7 section (b), or the participation of an employer under sub-
8 section (b) in the third party consultation program, if the
9 Secretary determines that the consultant or employer—

10 “(1) has failed to meet the requirements of the
11 program; or

12 “(2) has committed malfeasance, gross neg-
13 ligence, collusion or fraud in connection with any
14 consultation services provided by the qualified con-
15 sultant.

16 “(e) PROGRAM REQUIREMENTS.—

17 “(1) FULL SERVICE CONSULTATION.—The con-
18 sultation services described in subsection (b), and
19 provided by a consultant qualified under the pro-
20 gram under subsection (b)(1), shall include an eval-
21 uation of the workplace of an employer to determine
22 if the employer is in compliance with the require-
23 ments of this Act, including any regulations promul-
24 gated pursuant to this Act. Employers electing to
25 participate in such program shall contract with a

1 consultant qualified under subsection (b)(2) to per-
2 form a full service visit and consultation covering
3 the employer's establishment, including a complete
4 safety and health program review. Following the
5 guidance as specified in this section, the consultant
6 shall discuss with the employer the elements of an
7 effective program.

8 “(2) CONSULTATION REPORT.—

9 “(A) IN GENERAL.—After a consultant
10 conducts a comprehensive survey of an em-
11 ployer under a program under this section, the
12 consultant shall prepare and submit to the em-
13 ployer a written report that includes an action
14 plan identifying any violations of this Act, and
15 any appropriate corrective measures to address
16 the violations that are identified using an effec-
17 tive safety and health program.

18 “(B) ELEMENTS.—A consultation report
19 shall contain each of the following elements.

20 “(i) ACTION PLAN.—

21 “(I) IN GENERAL.—An action
22 plan under subparagraph (A) shall be
23 developed in consultation with the em-
24 ployer as part of the initial com-
25 prehensive survey. The consultant and

1 the employer shall jointly use the on-
2 site time in the initial visit to the em-
3 ployer's place of business to agree on
4 the terms of the action plan and the
5 time frames for achieving specific
6 items.

7 “(II) REQUIREMENTS.—The ac-
8 tion plan shall outline the specific
9 steps that must be accomplished by
10 the employer prior to receiving a cer-
11 tificate of compliance. The action plan
12 shall address in detail—

13 “(aa) the employer's correc-
14 tion of all identified safety and
15 health hazards, with applicable
16 time frames;

17 “(bb) the steps necessary for
18 the employer to implement an ef-
19 fective safety and health pro-
20 gram, with applicable time
21 frames; and

22 “(cc) a statement of the em-
23 ployer's commitment to work
24 with the consultation project to

1 achieve a certificate of compli-
2 ance.

3 “(ii) SAFETY AND HEALTH PRO-
4 GRAM.—An employer electing to partici-
5 pate in a program under this section shall
6 establish a safety and health program to
7 manage workplace safety and health to re-
8 duce injuries, illnesses and fatalities that
9 complies with paragraph (3). Such safety
10 and health program shall be appropriate to
11 the conditions of the workplace involved.

12 “(3) REQUIREMENTS FOR SAFETY AND HEALTH
13 PROGRAM.—

14 “(A) WRITTEN PROGRAM.—An employer
15 electing to participate shall maintain a written
16 safety and health program that contains poli-
17 cies, procedures, and practices to recognize and
18 protect their employees from occupational safe-
19 ty and health hazards. Such procedures shall
20 include provisions for the identification, evalua-
21 tion and prevention or control of workplace haz-
22 ards.

23 “(B) MAJOR ELEMENTS.—A safety and
24 health program shall include the following ele-
25 ments, and may include other elements as nec-

1 essary to the specific worksite involved and as
 2 determined appropriate by the qualified consult-
 3 ant and employer:

4 “(i) EMPLOYER COMMITMENT AND
 5 EMPLOYEE INVOLVEMENT.—

6 “(I) IN GENERAL.—The existence
 7 of both management leadership and
 8 employee participation must be dem-
 9 onstrated in accordance with sub-
 10 clauses (II) and (III).

11 “(II) MANAGEMENT LEADER-
 12 SHIP.—To make a demonstration of
 13 management leadership under this
 14 subclause, the employer shall—

15 “(aa) set a clear worksite
 16 safety and health policy that em-
 17 ployees can fully understand;

18 “(bb) set and communicate
 19 clear goals and objectives with
 20 the involvement of employees;

21 “(cc) provide essential safety
 22 and health leadership in tangible
 23 and recognizable ways;

24 “(dd) set positive safety and
 25 health examples; and

1 “(ee) perform comprehensive
2 reviews of safety and health pro-
3 grams for quality assurance
4 using a process which promotes
5 continuous correction.

6 “(III) EMPLOYEE PARTICIPA-
7 TION.—With respect to employee par-
8 ticipation, the employer shall dem-
9 onstrate a commitment to working to
10 develop a comprehensive, written and
11 operational safety and health program
12 that involves employees in significant
13 ways that affect safety and health. In
14 making such a demonstration, the em-
15 ployer shall—

16 “(aa) provide for employee
17 participation in actively identify-
18 ing and resolving safety and
19 health issues in tangible ways
20 that employees can clearly under-
21 stand;

22 “(bb) assign safety and
23 health responsibilities in such a
24 way that employees can under-

1 stand clearly what is expected of
2 them;

3 “(cc) provide employees with
4 the necessary authority and re-
5 sources to meet their safety and
6 health responsibilities; and

7 “(dd) provide that safety
8 and health performance for man-
9 agers, supervisors and employees
10 be measured in tangible ways.

11 “(ii) WORKPLACE ANALYSIS.—The
12 employer, in consultation with the consult-
13 ant, shall systematically identify and assess
14 hazards in the following ways:

15 “(I) Conduct corrective action
16 and regular expert surveys to update
17 hazard inventories.

18 “(II) Have competent personnel
19 review every planned or new facility,
20 process material, or equipment.

21 “(III) Train all employees and
22 supervisors, conduct routine joint in-
23 spections, and correct items identified.

1 “(IV) Establish a way for em-
2 ployees to report hazards and provide
3 prompt responses to such reports.

4 “(V) Investigate worksite acci-
5 dents and near accidents.

6 “(VI) Provide employees with the
7 necessary information regarding inci-
8 dent trends, causes and means of pre-
9 vention.

10 “(iii) HAZARD PREVENTION.—The
11 employer, in consultation with the consult-
12 ant, shall—

13 “(I) engage in timely hazard con-
14 trol, working to ensure that hazard
15 controls are fully in place and commu-
16 nicated to employees, with emphasis
17 on engineering controls and enforcing
18 safe work procedures;

19 “(II) maintain equipment using
20 operators who are trained to recognize
21 maintenance needs and perform or di-
22 rect timely maintenance;

23 “(III) provide training on emer-
24 gency planning and preparation,
25 working to ensure that all personnel

1 know immediately how to respond as
2 a result of effective planning, training,
3 and drills;

4 “(IV) equip facilities for emer-
5 gencies with all systems and equip-
6 ment in place and regularly tested so
7 that all employees know how to com-
8 municate during emergencies and how
9 to use equipment; and

10 “(V) provide for emergency medi-
11 cal situations using employees who are
12 fully trained in emergency medicine.

13 “(iv) SAFETY AND HEALTH TRAIN-
14 ING.—The employer, in consultation with
15 the consultant, shall—

16 “(I) involve employees in hazard
17 assessment, development and delivery
18 of training;

19 “(II) actively involve supervisors
20 in worksite analysis by empowering
21 them to ensure physical protections,
22 reinforce training, enforce discipline,
23 and explain work procedures; and

24 “(III) provide training in safety
25 and health management to managers.

1 “(4) REINSPECTION.—At a time agreed to by
2 the employer and the consultant, the consultant may
3 reinspect the workplace of the employer to verify
4 that the required elements in the consultation report
5 have been satisfied. If such requirements have been
6 satisfied, the employer shall be provided with a cer-
7 tificate of compliance for that workplace by the
8 qualified consultant.

9 “(f) EXEMPTION FROM CIVIL PENALTIES FOR COM-
10 PLIANCE.—

11 “(1) IN GENERAL.—If an employer enters into
12 a contract with an individual qualified under the
13 program under this section, to provide consultation
14 services described in subsection (b), and receives a
15 certificate of compliance under subsection (e)(4), the
16 employer shall be exempt from the assessment of
17 any civil penalty under section 17 for a period of 1
18 year after the date on which the employer receives
19 such certificate.

20 “(2) EXCEPTIONS.—An employer shall not be
21 exempt under paragraph (1)—

22 “(A) if the employer has not made a good
23 faith effort to remain in compliance as required
24 under the certificate of compliance; or

1 “(B) to the extent that there has been a
2 fundamental change in the hazards of the work-
3 place.

4 “(g) RIGHT TO INSPECT.—Nothing in this section
5 shall be construed to affect the rights of the Secretary to
6 inspect and investigate worksites covered by a certificate
7 of compliance.

8 “(h) RENEWAL REQUIREMENTS.—An employer that
9 is granted a certificate of compliance under this section
10 may receive a 1 year renewal of the certificate if the fol-
11 lowing elements are satisfied:

12 “(1) A qualified consultant shall conduct a com-
13 plete onsite safety and health survey to ensure that
14 the safety and health program has been effectively
15 maintained or improved, workplace hazards are
16 under control, and elements of the safety and health
17 program are operating effectively.

18 “(2) The consultant, in an onsite visit by the
19 consultant, has determined that the program re-
20 quirements have been complied with and the health
21 and safety program has been operating effectively.

22 “(i) NON-FIXED WORK SITES.—With respect to em-
23 ployer worksites that do not have a fixed location, a certifi-
24 cate of compliance shall only apply to that worksite which
25 satisfies the criteria under this section and such certificate

1 shall not be portable to any other worksite. This section
 2 shall not apply to service establishments that utilize essen-
 3 tially the same work equipment at each non-fixed work-
 4 site.”.

5 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COMMIT-**
 6 **TEE.**

7 Section 7 of the Act (29 U.S.C. 656) is amended by
 8 adding at the end the following:

9 “(d)(1) Not later than 6 months after the date of
 10 enactment of this subsection, the Secretary shall establish
 11 an advisory committee (pursuant to the Federal Advisory
 12 Committee Act (5 U.S.C. App.)) to carry out the duties
 13 described in paragraph (3).

14 “(2) The advisory committee shall be composed of—

15 “(A) 3 members who are employees;

16 “(B) 3 members who are employers;

17 “(C) 2 members who are members of the gen-
 18 eral public; and

19 “(D) 1 member who is a State official from a
 20 State plan State.

21 Each member of the advisory committee shall have exper-
 22 tise in workplace safety and health as demonstrated by
 23 the educational background of the member.

24 “(3) The advisory committee shall advise and make
 25 recommendations to the Secretary with respect to the es-

1 tablishment and implementation of a consultation services
 2 program under section 8A.”.

3 **SEC. 5. CONTINUING EDUCATION AND PROFESSIONAL CER-**
 4 **TIFICATION FOR CERTAIN OCCUPATIONAL**
 5 **SAFETY AND HEALTH ADMINISTRATION PER-**
 6 **SONNEL.**

7 Section 8 of the Act (29 U.S.C. 657) is amended by
 8 adding at the end the following:

9 “(h) Any Federal employee responsible for enforcing
 10 this Act shall, not later than 2 years after the date of
 11 enactment of this subsection or 2 years after the initial
 12 employment of the employee involved, meet the eligibility
 13 requirements prescribed under subsection (b)(2) of section
 14 8A.

15 “(i) The Secretary shall ensure that any Federal em-
 16 ployee responsible for enforcing this Act who carries out
 17 inspections or investigations under this section, receive
 18 professional education and training at least every 5 years
 19 as prescribed by the Secretary.”.

20 **SEC. 6. EXPANDED INSPECTION METHODS.**

21 (a) PURPOSE.—It is the purpose of this section to
 22 empower the Secretary of Labor to achieve increased em-
 23 ployer compliance by using, at the Secretary’s discretion,
 24 more efficient and effective means for conducting inspec-
 25 tions.

1 (b) GENERAL.—Section 8(f) of the Act (29 U.S.C.
2 657(f) is amended—

3 (1) by adding at the end the following:

4 “(3) The Secretary or an authorized representative
5 of the Secretary may, as a method of investigating an al-
6 leged violation or danger under this subsection, attempt,
7 if feasible, to contact an employer by telephone, facsimile,
8 or other appropriate methods to determine whether—

9 “(A) the employer has taken corrective actions
10 with respect to the alleged violation or danger; or

11 “(B) there are reasonable grounds to believe
12 that a hazard exists.

13 “(4) The Secretary is not required to conduct an in-
14 spection under this subsection if the Secretary determines
15 that a request for an inspection was made for reasons
16 other than the safety and health of the employees of an
17 employer or that the employees of an employer are not
18 at risk.”.

19 **SEC. 7. WORKSITE-SPECIFIC COMPLIANCE METHODS.**

20 Section 9 of the Act (29 U.S.C. 658) is amended by
21 adding at the end the following:

22 “(d) A citation issued under subsection (a) to an em-
23 ployer who violates section 5, any standard, rule, or order
24 promulgated pursuant to section 6, or any other regulation
25 promulgated under this Act shall be vacated if such em-

1 ployer demonstrates that the employees of such employer
 2 were protected by alternative methods that are equally or
 3 more protective of the safety and health of the employees
 4 than the methods required by such standard, rule, order,
 5 or regulation in the factual circumstances underlying the
 6 citation.

7 “(e) Subsection (d) shall not be construed to elimi-
 8 nate or modify other defenses that may exist to any cita-
 9 tion.”.

10 **SEC. 8. TECHNICAL ASSISTANCE PROGRAM.**

11 (a) IN GENERAL.—Section 21(c) of the Act (29
 12 U.S.C. 670(c)) is amended—

13 (1) by striking “(c) The” and inserting “(c)(1)
 14 The”;

15 (2) by striking “(1) provide” and inserting “(A)
 16 provide”;

17 (3) by striking “(2) consult” and inserting “(B)
 18 consult”; and

19 (4) by adding at the end the following:

20 “(2)(A) The Secretary shall, through the authority
 21 granted under section 7(c) and paragraph (1), enter into
 22 cooperative agreements with States for the provision of
 23 consultation services by such States to employers concern-
 24 ing the provision of safe and healthful working conditions.

1 “(B)(i) Except as provided in clause (ii), the Sec-
 2 retary shall reimburse a State that enters into a coopera-
 3 tive agreement under subparagraph (A) in an amount that
 4 equals 90 percent of the costs incurred by the State for
 5 the provision of consultation services under such agree-
 6 ment.

7 “(ii) A State shall be reimbursed by the Secretary
 8 for 90 percent of the costs incurred by the State for the
 9 provision of—

10 “(I) training approved by the Secretary for
 11 State personnel operating under a cooperative agree-
 12 ment; and

13 “(II) specified out-of-State travel expenses in-
 14 curred by such personnel.

15 “(iii) A reimbursement paid to a State under this
 16 subparagraph shall be limited to costs incurred by such
 17 State for the provision of consultation services under this
 18 paragraph and the costs described in clause (ii).”.

19 (b) PILOT PROGRAM.—Section 21 of the Act (29
 20 U.S.C. 670) is amended by adding at the end the follow-
 21 ing:

22 “(d)(1) Not later than 90 days after the date of en-
 23 actment of this subsection, the Secretary shall establish
 24 and carry out a pilot program in 3 States to provide expe-
 25 dited consultation services, with respect to the provision

1 of safe and healthful working conditions, to employers that
2 are small businesses (as the term is defined by the Admin-
3 istrator of the Small Business Administration). The Sec-
4 retary shall carry out the program for a period of not to
5 exceed 2 years.

6 “(2) The Secretary shall provide consultation services
7 under paragraph (1) not later than 4 weeks after the date
8 on which the Secretary receives a request from an em-
9 ployer.

10 “(3) The Secretary may impose a nominal fee to an
11 employer requesting consultation services under para-
12 graph (1). The fee shall be in an amount determined by
13 the Secretary. Employers paying a fee shall receive prior-
14 ity consultation services by the Secretary.

15 “(4) In lieu of issuing a citation under section 9 to
16 an employer for a violation found by the Secretary during
17 a consultation under paragraph (1), the Secretary shall
18 permit the employer to carry out corrective measures to
19 correct the conditions causing the violation. The Secretary
20 shall conduct not more than 2 visits to the workplace of
21 the employer to determine if the employer has carried out
22 the corrective measures. The Secretary shall issue a cita-
23 tion as prescribed under section 5 if, after such visits, the
24 employer has failed to carry out the corrective measures.

1 “(5) Not later than 90 days after the termination of
 2 the program under paragraph (1), the Secretary shall pre-
 3 pare and submit a report to the appropriate committees
 4 of Congress that contains an evaluation of the implemen-
 5 tation of the pilot program.”.

6 **SEC. 9. VOLUNTARY PROTECTION PROGRAMS.**

7 (a) COOPERATIVE AGREEMENTS.—The Secretary of
 8 Labor shall establish cooperative agreements with employ-
 9 ers to encourage the establishment of comprehensive safe-
 10 ty and health management systems that include—

11 (1) requirements for systematic assessment of
 12 hazards;

13 (2) comprehensive hazard prevention, mitiga-
 14 tion, and control programs;

15 (3) active and meaningful management and em-
 16 ployee participation in the voluntary program de-
 17 scribed in subsection (b); and

18 (4) employee safety and health training.

19 (b) VOLUNTARY PROTECTION PROGRAM.—

20 (1) IN GENERAL.—The Secretary of Labor shall
 21 establish and carry out a voluntary protection pro-
 22 gram (consistent with subsection (a)) to encourage
 23 and recognize the achievement of excellence in both
 24 the technical and managerial protection of employees
 25 from occupational hazards.

1 (2) PROGRAM REQUIREMENT.—The voluntary
2 protection program shall include the following:

3 (A) APPLICATION.—Employers who volun-
4 teen under the program shall be required to
5 submit an application to the Secretary of Labor
6 demonstrating that the worksite with respect to
7 which the application is made meets such re-
8 quirements as the Secretary of Labor may re-
9 quire for participation in the program.

10 (B) ONSITE EVALUATIONS.—There shall
11 be onsite evaluations by representatives of the
12 Secretary of Labor to ensure a high level of
13 protection of employees. The onsite visits shall
14 not result in enforcement of citations under the
15 Occupational Safety and Health Act of 1970
16 (29 U.S.C. 651 et seq.).

17 (C) INFORMATION.—Employers who are
18 approved by the Secretary of Labor for partici-
19 pation in the program shall assure the Sec-
20 retary of Labor that information about the
21 safety and health program of the employers
22 shall be made readily available to the Secretary
23 of Labor to share with employees.

24 (D) REEVALUATIONS.—Periodic reevalua-
25 tions by the Secretary of Labor of the employ-

1 ers shall be required for continued participation
2 in the program.

3 (3) EXEMPTIONS.—A site with respect to which
4 a program has been approved shall, during partici-
5 pation in the program be exempt from inspections or
6 investigations and certain paperwork requirements
7 to be determined by the Secretary of Labor, except
8 that this paragraph shall not apply to inspections or
9 investigations arising from employee complaints, fa-
10 talities, catastrophes, or significant toxic releases.

11 (4) INCREASED SMALL BUSINESS PARTICIPA-
12 TION.—The Secretary of Labor shall establish and
13 implement, by regulation, a program to increase par-
14 ticipation by small businesses (as the term is defined
15 by the Administrator of the Small Business Admin-
16 istration) in the voluntary protection program
17 through outreach and assistance initiatives and de-
18 veloping program requirements that address the
19 needs of small businesses.

20 **SEC. 10. PREVENTION OF ALCOHOL AND SUBSTANCE**
21 **ABUSE.**

22 The Act (29 U.S.C. 651 et seq.) is amended by add-
23 ing at the end the following:

1 **“SEC. 35. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

2 “(a) PROGRAM PURPOSE.—In order to secure a safe
3 workplace, employers may establish and carry out an alco-
4 hol and substance abuse testing program in accordance
5 with subsection (b).

6 “(b) FEDERAL GUIDELINES.—

7 “(1) REQUIREMENTS.—An alcohol and sub-
8 stance abuse testing program described in subsection
9 (a) shall meet the following requirements:

10 “(A) SUBSTANCE ABUSE.—A substance
11 abuse testing program shall permit the use of
12 an onsite or offsite testing.

13 “(B) ALCOHOL.—The alcohol testing com-
14 ponent of the program shall take the form of al-
15 cohoh breath analysis and shall conform to any
16 guidelines developed by the Secretary of Trans-
17 portation for alcohol testing of mass transit em-
18 ployees under the Department of Transpor-
19 tation and Related Agencies Appropriations
20 Act, 1992.

21 “(2) DEFINITION.—For purposes of this section
22 the term ‘alcohol and substance abuse testing pro-
23 gram’ means any program under which test proce-
24 dures are used to take an analyze blood, breath,
25 hair, urine, saliva, or other body fluids or materials
26 for the purpose of detecting the presence or absence

1 of alcohol or a drug or its metabolites. In the case
2 of urine testing, the confirmation tests must be per-
3 formed in accordance with the mandatory guidelines
4 for Federal workplace testing programs published by
5 the Secretary of Health and Human Services on
6 April 11, 1988, at section 11979 of title 53, Code
7 of Federal Regulations (including any amendments
8 to such guidelines). Proper laboratory protocols and
9 procedures shall be used to assure accuracy and fair-
10 ness and laboratories must be subject to the require-
11 ments of subpart B of the mandatory guidelines,
12 State certification, the Clinical Laboratory Improve-
13 ments Act of the College of American Pathologists.

14 “(c) TEST REQUIREMENTS.—This section shall not
15 be construed to prohibit an employer from requiring—

16 “(1) an applicant for employment to submit to
17 and pass an alcohol or substance abuse test before
18 employment by the employer; or

19 “(2) an employee, including managerial person-
20 nel, to submit to and pass an alcohol or substance
21 abuse test—

22 “(A) on a for-cause basis or where the em-
23 ployer has reasonable suspicion to believe that
24 such employee is using or is under the influence
25 of alcohol or a controlled substance;

1 “(B) where such test is administered as
2 part of a scheduled medical examination;

3 “(C) in the case of an accident or incident,
4 involving the actual or potential loss of human
5 life, bodily injury, or property damage;

6 “(D) during the participation of an em-
7 ployee in an alcohol or substance abuse treat-
8 ment program, and for a reasonable period of
9 time (not to exceed 5 years) after the conclu-
10 sion of such program; or

11 “(E) on a random selection basis in work
12 units, locations, or facilities.

13 “(d) CONSTRUCTION.—Nothing in this section shall
14 be construed to require an employer to establish an alcohol
15 and substance abuse testing program for applicants or em-
16 ployees or make employment decisions based on such test
17 results.

18 “(e) PREEMPTION.—The provisions of this section
19 shall not preempt any provision of State law to the extent
20 that such State law is inconsistent with this section.

21 “(f) INVESTIGATIONS.—The Secretary is authorized
22 to conduct testing of employees (including managerial per-
23 sonnel) of an employer for use of alcohol or controlled sub-
24 stances during any investigations of a work-related fatality
25 or serious injury.”.

1 **SEC. 11. DISCRETIONARY COMPLIANCE ASSISTANCE.**

2 Subsection (a) of section 9 of the Act (29 U.S.C.
3 658(a)) is amended to read as follows:

4 “(a)(1) Nothing in this Act shall be construed as pro-
5 hibiting the Secretary or the authorized representative of
6 the Secretary from providing technical or compliance as-
7 sistance to an employer in correcting a violation discovered
8 during an inspection or investigation under this Act with-
9 out issuing a citation.

10 “(2) Except as provided in paragraph (3), if, upon
11 an inspection or investigation, the Secretary or an author-
12 ized representative of the Secretary believes that an em-
13 ployer has violated a requirement of section 5, of any regu-
14 lation, rule, or order promulgated pursuant to section 6,
15 or of any regulations prescribed pursuant to this Act, the
16 Secretary may with reasonable promptness issue a citation
17 to the employer. Each citation shall be in writing and shall
18 describe with particularity the nature of a violation, in-
19 cluding a reference to the provision of the Act, regulation,
20 rule, or order alleged to have been violated. The citation
21 shall fix a reasonable time for the abatement of the viola-
22 tion.

23 “(3) The Secretary or the authorized representative
24 of the Secretary—

1 “(A) may issue a warning in lieu of a citation
2 with respect to a violation that has no significant re-
3 lationship to employee safety or health; and

4 “(B) may issue a warning in lieu of a citation
5 in cases in which an employer in good faith acts
6 promptly to abate a violation if the violation is not
7 a willful or repeated violation.”.

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